D.B.CIVIL SPECIAL APPEAL NO.138/2006

DATE OF ORDER : 8/11/2006

HON'BLE SHRI RAJESH BALIA,J .

HON'BLE SHRI GOPAL KRISHAN VYAS, J.

Mr.M.K.Trivedi, for the appellants.
Mr.R.R.Vyas, for respondent no.1
Mr.Shailendra Kala, for the respondent no.2

This appeal is against the order passed by learned Single Judge dismissing the application moved by the appellants for being impleaded as party in the appeal that is pending before the learned Single Judge.

At the time of filing of the suit by the respondent no.1 against the respondent no.2, the appellants, who are sons of respondent no. 2 were not impleaded as party. The appellants state that decree of eviction was also sought against them along with their mother yet they were not impleaded as party to the suit. The appellants were minor at the time of filing of suit. It was stated by the learned counsel that decree was sough against the respondent no.2 along with her two sons for evicting them from the suit property.

It was stated by learned counsel for the appellants that minor children against whom aforesaid decree was sought were not impleaded as party and, therefore, their rights are vitally affected by the outcome. On the aforesaid premise, an application was made for becoming party to the appeal.

Learned counsel for the respondent-plaintiff states that notwithstanding the aforesaid claim, decree has not been passed only against respondent no.2.

In view of the aforesaid, it is apparent that there being no decree against the appellants, notwithstanding relief claimed by the plaintiff, the decree against them cannot be executed, if they are in possession of the property.

It is trite to say that minor has a separate and independent identity. If any relief is claimed against a minor, he has to be impleaded as a party through next friend. He cannot be bound by a decree passed in a suit in which he is not impleaded as party. Merely because a decree is passed against a person, who

happens to be natural guardian of such minor, he is not bound by such decree nor such decree can be executed against him to jeopardize his right. In that view of the matter, the order under appeal being no prejudicial to interest of appellants and not affecting their rights, no interference is called for.

In view of the above, application for becoming party to the appeal has rightly been rejected.

Accordingly, this special appeal fails and is hereby dismissed.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

Pankaj Baweja.